

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

74-2317

To be argued by:

GEORGE SHEINBERG, ESQ.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Docket No. 74-2317

UNITED STATES OF AMERICA,

Appellee,

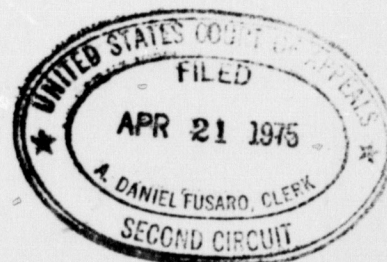
against

ALFONSO MELO OBANDO,

Appellant.

Appeal from The United States District Court
for the Eastern District of New York.

APPELLANT'S APPENDIX



Attorney for Appellant
GEORGE SHEINBERG

ATTORNEY AT LAW
66 COURT STREET
BROOKLYN, N. Y. 11201

ULSTER 2-8282

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A P P E N D I X

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TPP:BJF:dc
F.#741,022

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

DOOLING

74CR 14

----- X

UNITED STATES OF AMERICA

IN CLERK'S OFFICE
DISTRICT COURT E.D. N.Y.

SUPERSEDING INDICTMENT

-against-



JAN 9 1974

Cr. No.

(T. 21, U.S.C., §846
21, U.S.C., §963
21, U.S.C., §952(a)
21, U.S.C., §960(a) (1)
18, U.S.C., §2)

CARLOS BAEZA,
JUAN OSORIO a/k/a "Coco"
GILBERTO MORALES,
VICTOR CONTRERAS,
ALFONSO MELO OBANDO,
ALFREDO VARGAS VEGA,
ENRIQUE MUNOZ,
JOHN DOE a/k/a "Lucho"
JOHN DOE a/k/a "Jose"
JOHN DOE a/k/a "Juan",

TIME A.M.....
P.M.....

74CR 14

Defendants.

THE GRAND JURY CHARGES:

On or about and between the 1st day of July 1972, and the 18th day of November 1973, both dates being approximate and inclusive, within the Eastern District of New York, and elsewhere, the defendants CARLOS BAEZA, JUAN OSORIO a/k/a "Coco", GILBERTO MORALES, VICTOR CONTRERAS, ALFONSO MELO OBANDO, ALFREDO VARGAS VEGA, ENRIQUE MUNOZ, JOHN DOE a/k/a "Lucho", JOHN DOE a/k/a "Jose", and JOHN DOE a/k/a "Juan", together with Luis Hernando Marino, named as a co-conspirator but not as a defendant, and others known and unknown to the Grand Jury, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1) and 960(b)(1) of Title 21, United States Code.

1. It was a part of said conspiracy that the defendants knowingly and intentionally would import large amounts of cocaine, a Schedule II narcotic drug controlled substance, into the United States from places outside thereof.

2. It was further a part of said conspiracy that the defendants knowingly and intentionally would distribute and possess with intent to distribute large amounts of cocaine,

②

-2-

a Schedule II narcotic drug controlled substance.

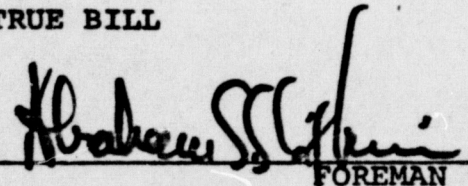
3. It was further a part of said conspiracy that the defendants would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

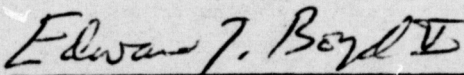
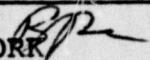
In furtherance of the conspiracy and to effect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

OVERT ACTS

1. In or about November 1972, defendant MUNOZ met with co-conspirator Marino in Queens, New York.
2. On or about November 23, 1972 defendant JOHN DOE a/k/a "Juan" delivered approximately thirty-two and one-half (32-1/2) pounds of cocaine to co-conspirator Marino in Montreal, Canada.
3. In or about June 1973, defendants BAEZA and OSORIO met with another in Santiago, Chile.
4. On or about August 7, 1973, defendant CONTRERAS delivered a quantity of cocaine to another in Montreal, Canada.
5. On or about August 8, 1973, defendant MORALES received approximately twenty-five and one-quarter (25-1/4) pounds of cocaine from another in Montreal, Canada.
6. On or about November 16, 1973, defendants OBANDO and VEGA met in New York, New York.
7. On or about November 18, 1973, defendant JOHN DOE a/k/a "Lucho" received thirteen thousand (\$13,000) United States dollars from another in Santiago, Chile.
(Title 21, United States Code, §846 and §963.)

A TRUE BILL


FOREMAN


UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK 

D. C. Form No. 100
CRIMINAL DOCKET

74 CR 14

BOOK 107 MISHLER,
DOOLING, J.

TITLE OF CASE	ATTORNEYS
THE UNITED STATES	For U.S.: Fried
vs.	for deft BAEZA:
CARLOS BAEZA,	Fisher, Rosner & Scribner
JUAN OSORIO. a/k/a "Coco",	401 Broadway, NYC.
GILBERTO MORALES,	925-8844
VICTOR CONTRERAS,	
X ALFONSO MELO OBANDO,	For Defendant: BAEZA-Thomas
X ALFREDO VARGAS VEGA,	O'Brien-2 Penn. Plaza. N
ENRIQUE MUNOZ,	Suite 2690- 947-6147
JOHN DOE, a/k/a "Lucho"	VARGAS-VEGA- Jack Sachs
JOHN DOE, a/k/a "Jose"	Broadway, N.Y. 431-6990
JOHN DOE, a/k/a "Juan"	

ABSTRACT OF COSTS	AMOUNT	CASH RECEIVED AND DISBURSED			
		DATE	NAME	RECEIVED	DISBURSED
Fine,		10/4/74	Notice of appeal (NO fee)		
Clerk,			(OBANDO and VEGA)		
Marshal,					
Attorney,					
Commissioner's Court,					
Witnesses,					

DATE	PROCEEDINGS
1-9-74	Before Judd, J.- Indictment filed ordered sealed by the Court - Bench Warrants Ordered.
3-20-74	Bench warrants issued
3-29-74	Bench Warrant Issued
5-6-74	Bench warrant retd and filed- executed
5-6-74	Before DOOLING, J.- Case called- Indictment ordered unsealed by the court Deft produced on a bench warrant- M. Mensa sworn as interpreter-Thomas O'Brien assigned as counsel present- Deft arraigned and enters a plea of not guilty- Bail set at \$500,000.00 (CARLOS BAEZA)
5-6-74	By DOOLING, J.-Order appointing counsel filed (BAEZA)-Financial Affidavit filed
5-7-74	Before DOOLING, J. - Case called- OBANDO and counsel S. Chrein of Law Aid present- Libya Clancy sworn as interpreter- S. Chrein sworn as

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DATE	PROCEEDINGS	CLERK'S FEES	
		PLAINTIFF	DEFENDANT
	to be relieved as counsel- Motion granted-Deft VEGA and counsel George Sheinberg present- Mr. Sheinberg moves to be relived as counsel and to be retained as counsel for deft OBANDO- Decision reserved		
5-7-74	By DOOLING, J.- Order appointing counsel filed (VARGAS-VEGA)		
5-7-74	Notice of readiness for trial filed		
5-13-74	Before DOOLING J - case called - deft VARGAS-VEGA & counsel J. Sachs present - Margarita Mensa sworn as interpreter - deft arraigned and enters a plea of not guilty - deft continued in custody.		
5-13-74	Letter to A.U.S.A. Watson from Thomas O'Brien, esq. filed re: deft Baeza and demands for discovery and inspection		
5-17-74	Letter from Jack Sachs, esq. to Chambers dated 5-16-74 filed Re: deft Vega		
5-22-74	Notice of Motion filed, ret. May 24, 1974, for dismissal of the Indictment etc. (deft ALFONSO MELO O'BANDO)		
5/24/74	Before DOOLING, J.- Case called- Deft A. OBANDO and counsel G. Sheinberg present- E. Rodriguez sworn as interpreter- Deft arraigned and enters a plea of not guilty-Deft's motion to dismiss the indictment argued -Sealed affidavit ordered unsealed-Motion denied-Deft moves for a reduction of bail-Motion denied.		
6-4-74	Before MISHLER, CH J - case called - Oral motion by deft BIAZA for Bill of Particulars, granted in part as indicated on the record; oral motion by deft BIAZA for a continuance of the trial is respectfully referred to Judge Dooling.		
6-7-74	Notice of Appearance filed (CARLOS BAEZA)		
6-14-74	Voucher for Expert Services filed (Carloa Baeza) Gerardo Sanchez for translation, etc.		
6-17-74	Notice of motion for a continuance and or severance (BAEZA)		
6-17-74	Before DOOLING J - case called - Libya Clancy sworn as interpreter - deft BAEZA & counsel Alan Scribner present: deft Melo Obando & counsel George Sheinberg present: deft Vargas Vega present with counsel Jack Sachs - deft Baeza's motion for an adjournment or a severance - motion to sever is denied without prejudice -case marked ready and passed to follow US vs. James Brooks, 69 CR-245.		
6-19-74	Before DOOLING J - case called - Deft BAEZA & counsel A. Schreiber present - deft Obando & counsel George Sheinberg present - deft Vega present without counsel - Margarita Mensa sworn as interpreter - Ivan Fisher another counsel for deft Baeza reported via conference telephone call from Argentina Conference held - motions scheduled for June 20, 1974.		

CRIMINAL DOCKET

DATE	PROCEEDINGS
6-20-74	Before DOOLING J - case called - defts present with counsels - Margarita Mensa sworn as interpreter - deft Baeza moves for an adjournment of 3 weeks - Granted - trial scheduled for July 9, 1973. Deft Baeza moves to take the deposition of deft Osario and other witnesses via video tape - Govt and other defts not opposing - Motion granted - submit Order on consent.
6-21-74	By DOOLING J.- Order filed that deposition of co-deft Osorio be taken in Buenos Aires, Argentina on or before 7-8-74, Ordered that the deposition of others named in order be taken on or before 8-8-74, Order that expenses of Geroge Sheinberg, and Jack Sachs shall be paid by the Govt- Ordered that deposition may be taken through the use of video tape- Ordered that at time of the taking of the deposition def BAEZA, OBANDO and VEGA shall be produced by the U.S. Marshal, etc.
6-21-74	Before DOOLING J.- Case called- Deft BAEZA and counsel Ivan Fisher present deft VEGA and counsel Jack Sachs present- Deft OBANDO and counsel Geroge Sheinberg ^{not} present- Margaret Mensa sworn as interpreter-Order for taking deposition signed
7-2-74	Letter from Judge Mishler dated 7-2-74 that trial of deft Baeza, Vega, and Obando has been advanced to 7-8-74 at 10:00 A.M.
7-8-74	Before MISHLER, CH J.- Case called- Defts Baeza, Vega and Obando present with counsel-Pre-trial conference set down for 7-11-74 at 10:00 A.M. Case reset for trial on 7-22-74 at 10:00 A.M.
7-11-74	Before MISHLER, Ch J - case called - defts BAEZA, VEGA & OBANDO present with counsels - Interpreter M.Mensa present - pre trial conference held - Autobility and suppression hearing held - Both sides rest - motion to suppress as to deft Obando is denied - decision reserved as to deft Vega - Briefs to be submitted - hearing concluded.
7-12-74	Stenographers transcript dated July 11, 1974 filed.
7-17-74	Govt's memorandum in opposition to motion to suppress evidence, etc obtained from deft Vargas Vega filed
7-22-74	Before MISHLER, CH J - case called - defts & counsels present - defts BAEZA & OBANDO motions for severance - motions denied - trial ordered & BEGUN - Jury selected and sworn - trial contd to July 24, 1974 at 9:30 am.
7-24-74	Before MISHLER, CH J -case called - defts & counsels & Interpreters Maria Elena Cardenas and Emil Rodriguez present Trial resumed - Trial contd to July 25, 1974 at 9:30 am.

DATE	PROCEEDINGS
7-25-74	Before MISHLER, CH J - case called - defts & counsels & interpreters present - trial resumed - trial contd to July 29, 1974.
7-29-74	By MISHLER, CH J - Order filed that the defts Baeza, Vega & Obando be placed in vault ordered sealed by Ch. Judge Mishler.
7-29-74	Before MISHLER, CH. J.- Case called- Defts and counsels present- Interpreter present- Trial resumed- Motion by Mr. Fisher and Mr. Sachs for a judgment of acquittal etc.- motion denied- Motion by Mr. Sheinberg for a severance judgment of acquittal etc.- motions denied- Trial contd to 7-30-74 at 9:30 am. (BAEZA, VARGAS VEGA, and OBANDO)
7-30-74	Before MISHLER, CH - case called - defts & counsels & interpreters present - trial resumed - alt. Juror #1 excused by Court with the consent of all attys - alt. Juror #2 now alternate Juror #1. Deft Carlos Baeza rests - deft Melo/rests - deft Alfredo Vargas-Vega rests - trial contd to July 31, 1974 at 9:30 am.
7-31-74	Before MISHLER, CH J - case called - defts & counsels & interpreters present - trial resumed - trial contd to Aug. 5, 1974.
8-2-74	By MISHLER, CH. J.- Order filed and ordered sealed by the court
8-5-74	Before MISHLER, CH. J.- Case called- Defts Bauza, Vega and Obando present with counsel-Interpreter Emil Rodriguez present- Interpreter Margarita Mensa present- Trial resumed- Trial contd to 8-6-74 at 9:30 A.M.
8-6-74	Before MISHLER, CH J.- case called - defts BAEZA, VEGA & OBANDO present with attys - trial resumed - Interpreters Emil Rodriguez and Maria Cardenas present - court ordered Govt Ex. #3500-17 resealed. Govt defts rest - motion by the defts for a judgment of acquittal - denied - trial contd to Aug. 7, 1974 at 10:00 am.
8-6-74	By MISHLER, CH J - Order of sustenance filed - lunch 14 persons.
8-7-74	Before Mishler, Ch J - case called - defts Baeza, Vega & Obando present with counsels - trial resumed - Interpreters Emil Rodriguez and Maria Cardenas present - at 11:50 AM the Jury retired for deliberations - motion by defts Baeza & Obando to dismiss the indictment is denied. Jury will resume deliberations on August 8, 1974 at 10:00 am.
8-7-74	By Mishler, Ch J - Order of sustenance filed (Lunch 14 persons)
8-8-74	Before MISHLER, CH J - case called - defts Baeza, Vega & Obando present with counsels - Interpreters E. Rodriguez and Marie Cardenas present - trial resumed - at 7:10 PM the Jury returned and rendered a verdict of guilty as to all 3 defts. Jury polled and discharged - all motions reserved until time of sentence - sentencing adjd without date - trial concluded.

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CRIMINAL DOCKET

DATE	PROCEEDINGS
8-8-74	By Mishler, Ch J - 2 Orders of Sustenance filed (Lunch & Dinner)
8-19-74	Voucher for Expert Services filed (VEGA)
9-10-74	10 Volumes of stenographic transcripts filed (pgs 190 to 1526)
9-12-74	Stenographic transcript filed dated July 8, 1974.
9-20-74	Affidavit of Bernard Fried (A.U.S.A.) Filed
10/4/74	Before MISHLER, CH.J.- Case called- Defts and counsel present- Inter ters present- Deft OBANDO'S motion to dismiss for lack of speedy tri argued- Defts OBANDO and VEGA sentenced to imprisonment for a perio 2 years- deft Obando also sentenced to a special parole term of 10 years- deft VEGA sentenced to an unsupervised special parole term of years- Special conditions of the special parole term is that both d not re-enter the U.S. or its territories during his special parole t Clerk to file notice of appeal without fee as to both defts (OBANDO and 10/4/74 Judgment and Commitment filed- certified copies to Marshal (OBANDO and VEGA) 10/4/74 Notice of appeal ^{without fee} Filed (OBANDO and VEGA) 10/4/74 Docket entries and duplicate of notice of appeal mailed to court of appeals (OBANDO and VEGA) 10-4-74 Before Mishler, Ch J - case called - sentence as to deft CARLOS BAEZA adjd to Nov. 15, 1974 on consent. 10-10-74 Voucher forwarded to the Court of Appeals for approval. (Alfredo Vargas Vega) 10-15-74 Certified copies of Judgments & Commitments retd and filed. Defts OBANDO & VEGA delivered to Federal Detention Headquarters. 10/15/74 Stenographers Transcript dated 7/8/74 filed 11/11/74 Letter from Ivan Fisher, esq. to chambers filed re: adjournment of sentence of deft BAEZA 11/11/74 Letter to Ivan Fisher, esq. from chambers filed re: adjourning sente to 12/20/74 at 10:00 A.M. 11/11/74 Voucher for compensation of counsel filed (VARGAS-VEGA) 11-15-74 Before MISHLER, CH J - sentence adjd to Dec. 20, 1974 on consent (CARLOS BAEZA) 12/20/74 Before MISHLER, CH.J.- Case called- Sentence of deft BAEZA adjd to 1/ on consent 12/24/74 Record on appeal certified and ^{handed to William Austin for delivery to} mailed to Federal Detention Headquarters (VEGA) c o

DATED

19 74

BY

1
2 THE COURT: Seat the jury please.

3 (Jury present.)

4 THE COURT: I like to abide by tradition.

5 Mr. Adler, my courtroom deputy, went to lock
6 the front door. It is traditional that during the
7 Court's charge that the courtroom be locked so that
8 your attention is not diverted. You see, we are given
9 every advantage.

10 The defendants Carlos Baeza, Alfonso Melo Obando
11 and Alfredo Vargas Vega are charged in this indictment
12 with entering into a conspiracy during the period on
13 or about and between July 1, 1972 and November 18, 1973
14 to import large amounts of cocaine and to distribute
15 and possess with intent to distribute large amounts of
16 cocaine, which is the statutory way of saying "to deal
17 in cocaine."

18 Of course, the indictment as you have heard
19 many times cannot be used as proof of the allegations
20 in the indictment. The mere fact that it says it,
21 does not prove it. The allegations in the indictment
22 must be proved separate and apart from the statements
23 in the indictment.

24 A criminal trial is an adversary proceeding.
25 The Government on the one hand and the defendants on

1
2 the other are adversaries. They compete over disputed
3 issues of fact and the theory is that if advocates of
4 comparable ability compete over the issues of fact,
5 that the evidence will thereby be developed fully for
6 the jury to see and in the process of developing the
7 evidence you find that there is a certain amount of
8 zeal, a certain amount of overstepping of what the
9 Court deems the bounds of propriety are, it all points
10 to the fact that the lawyers are partisans, they are
11 protagonists, they are bound in their client's cause.
12 That is as it should be.

13 The brief reprimands I may have given to one
14 lawyer or another was nothing more than to caution
15 them, recognizing he has a duty to his client. You
16 should attribute no ill motives in the conduct of the
17 lawyer, nor any determination by the Court other than
18 one of law. It was not to indicate or signal to you
19 in any way that I favored one party or the other.

20 Now, that is the job of one class of partici-
21 pants in a jury trial, the lawyers. The other is the
22 jury and the third is the Court.

23 There is a similar attitude assumed by both
24 the Court and jury in a fair jury trial. That is one
25 of objectivity and nonpartisanship. The Court and

1
2 the jury, of course, are interested in doing justice.
3 The only way it can be done is if we both separate our-
4 selves from the emotional entanglements that lawyers
5 have and observe the evidence dispassionately. The
6 analysis should be as cool as a surgeon's scalpel.

7 As between the Court and the jury, there is a
8 clear line of demarcation on authority and function.
9 The jury is in every sense of the word the judge of
10 the facts. That means that the jury alone decides
11 what happened -- the state of mind of the parties.
12 They are all issues of fact. The Court on the other
13 hand has the sole and absolute authority over the law
14 in the case. The rulings I made during the trial were
15 solely as a matter of law. Just as I respect your
16 authority to judge the facts and bring in the ultimate
17 verdict of guilt or innocence as to each defendant, so
18 you must observe the authority of the Court. I charge
19 the law as I understand the law to be. I attempt to
20 charge it ~~dispassionately~~. You must accept the law as
21 I charge it. You may disagree with the law. I will
22 soon come to charge you on the Drug Abuse and Control
23 Act of 1970 that was enacted by the Congress. Some of
24 you may think it was unnecessary, needless, should
25 never have been enacted. Some of you may privately

1
2 believe that it is best that we have no control over
3 drugs.

4 On the other hand, the other extreme may feel
5 that the laws are not stringent enough, that you would
6 have done a more efficient job if you were the Congress.
7 That is not your job. You must accept the law as I
8 charge it and I charge it as I understand the law to be
9 and that includes the statutory law.

10 If each one of us understands and recognizes the
11 function and the authority of the other participants in
12 the trial, I think it would make for a fair trial.

13 The action is captioned "United States of
14 America against Carlos Baeza, Alfonso Melo Obando,
15 Alfredo Vargas Vega." In this Court everyone is of
16 equal height. The United States of America has no
17 better right or receives no different treatment than
18 any other litigant in this Court. The defendants do
19 not speak our language and it would be a horrifying
20 violation of your obligation if you treated them any
21 differently than you treat the United States of America
22 or any other individual, either because they are
23 individuals, because they are nationals of other
24 countries. That has nothing to do with the case. It
25 is as if it were A against B, C and D. The names do

not mean anything. The rights and obligations of the parties involved are what counts.

We start with the presumption of innocence. I may use the term "accused" or "defendant" or "defendants," but I mean all three unless I single out a particular defendant for a particular charge. Each defendant is presumed to be innocent of the charge of this indictment. The defendants each pleaded not guilty. They are clothed with a presumption of innocence. That means you must conclude at the outset of this trial that they are innocent of the charge. That presumption remains throughout the trial and throughout your deliberations and is overcome only if and when the Government proves the guilt of the defendants by proof beyond a reasonable doubt. If the Government fails to sustain its burden, then you have the duty of acquitting the defendants. In other words, your duty is not so much to find out whether or not the defendants committed the violation charged, your duty is to determine whether the Government proved the guilt of the defendants by proof beyond a reasonable doubt. To analogize it to the Scotch verdict which you may have heard of. In Scotland they have three verdicts, guilty, not guilty and not proved. Here we have only

Charge of the Court

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two, guilty or not guilty. Not guilty includes not proved.

What is a reasonable doubt? A reasonable doubt is the kind of doubt a reasonable person would have after fair consideration of all the evidence in the case. It is a doubt based on reason and common sense, the state of the evidence in the case, as distinguished from something vague, speculative or imaginative doubt that you may have because of performing an unpleasant task. A reasonable doubt is the kind of doubt that would make a reasonable person hesitate to act. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that you'd be willing to rely and act upon it unhesitatingly in the most important of your own affairs. The Government's burden is not to prove the guilt of the defendants beyond all doubt. The Government's burden is not to prove every bit of evidence it offers at the trial is true beyond a reasonable doubt. The burden of the Government is to prove every essential element of the crime charged beyond a reasonable doubt, and later in the charge I will outline for you the four essential elements of the crime charged in this case.

The defendant does not have to produce any

1
2 evidence of his innocence or of their innocence. The
3 defendants have the right to rely on the failure of the
4 Government to prove its case by proof beyond a reason-
5 able doubt.

6 What is evidence? Evidence is the method the
7 law uses to prove or disprove a disputed fact. There
8 are two general classifications of evidence. One is
9 direct evidence and the other is circumstantial evidence.
10 Direct evidence is the testimony of a witness of what
11 that witness saw or heard. Circumstantial evidence is
12 the method of proving or disproving a disputed fact by
13 drawing inferences based upon experience and good
14 common sense from facts established.

15 An example would probably demonstrate what I
16 mean. I have used it many times. If you were sitting
17 here as a juror in a personal injury action and the
18 plaintiff was suing the defendant for personal injuries,
19 claiming that the defendant's motor vehicle struck a
20 party -- we will make it a female plaintiff so you can
21 more easily distinguish the characters involved -- and
22 the plaintiff claimed that the defendant's motor vehicle
23 passed a stop sign without stopping, and the defendant
24 denied it. We would then have a disputed issue of
25 fact. The plaintiff claimed that the defendant passed

1
2 the stop sign without stopping and the defendant is
3 saying, "No, I stopped and then I proceeded."

4 Well, if my courtroom deputy, Mr. Adler, and
5 myself were standing on the corner where the stop sign
6 had been erected and we had both been called to testify,
7 we would assume for these purposes that he was facing
8 the roadway while he was speaking with me, and I had
9 my back to the roadway and the sign while I was
10 speaking with him. If he were called, since he had the
11 stop sign in view, he would give direct evidence of
12 that issue. He might testify that the defendant's car,
13 a white 1974 Cadillac, was proceeding down a particular
14 street at about 65 miles an hour as he spoke with me
15 and saw the motor vehicle pass the stop sign without
16 stopping and strike the plaintiff causing the personal
17 injuries. That is direct testimony, of course.

18 Now, I had my back to the stop sign so I
19 couldn't testify directly to that disputed fact, but
20 I am a competent witness to testify about the surround-
21 ing circumstances from which the jury might reasonably
22 draw an inference as to whether or not that motor
23 vehicle passed the stop sign without stopping. I might
24 testify while I was speaking with Mr. Adler this 1974
25 Cadillac came within my peripheral vision and I

noticed it coming down the roadway at about 65 miles
an hour, that three seconds later and about 150 feet
beyond the point where I last saw it, I again saw the
motor vehicle and I saw it strike the plaintiff. The
facts that are established, if my testimony is
believable, is that the motor vehicle was traveling at
65 miles an hour, it traversed about 150 feet in about
three or four seconds, and I think you'll agree with
me from those established facts you would draw the
reasonable inference from good common sense and experi-
ence that the motor vehicle passed the stop sign without
stopping. So there we have direct evidence and circum-
stantial evidence.

(Continued next page.)

HS 1/2
fls

1
2
3 The law does not hold that one is of better
4 quality than the other. At times direct evidence is
5 of better quality and at times circumstantial evidence
6 is of better quality. The law requires the Government
7 to prove a case by proof beyond a reasonable doubt
8 based on all the testimony and that includes the
9 direct and the circumstantial evidence. I might point
10 out that it is rarely possible to prove knowledge of
11 criminal intent by direct evidence. We talk about a
12 state of mind, what the defendant was thinking, so that
13 circumstantial evidence would be the only evidence
14 available to the jury to make that determination. The
15 evidence in the case consists of the sworn testimony
16 of the witnesses called who testified before you, the
17 exhibits received in evidence regardless of who may
18 have produced them, the depositions offered by the
19 Defendant Baeza through the video taping, facts which
20 have been stipulated to by and between the attorneys,
21 and facts which the Court took judicial notice. For
22 example I may have taken judicial notice that the 16th
23 day of November 1973 was a Friday. That is part of
24 the evidence.

25 It may be important for you to know what is not
evidence. Statements or arguments of counsel made in

1
2 the opening and in summation is not evidence. They
3 serve a useful purpose. The openings are designed to
4 alert the jury to the positions of the respective
5 parties, so that when the evidence does come in you
6 may more easily follow it.

7
8 The summations are intended to focus attention
9 on what the parties regard as the important evidence
10 in the case and I hope in this case -- since the trial
11 started more than two weeks ago -- that it revived
12 your recollections as to the evidence in the case, but
13 summations serve that useful purpose. It offers
14 theories of exculpability on behalf of the defendants,
15 which means theories that would ask you to bring in a
16 verdict of not guilty, and theories of inculpability
17 offered by the Government which are theories of guilt.
18 All that is designed to stimulate your thinking and
19 place you on the right track so that you can seek out
20 the truth and come to a fair determination. But the
21 arguments of counsel, of course, are not evidence.

22 Any statement that I made -- I cannot think of
23 any -- certainly is not evidence. It has no effect
24 whatsoever. I did ask one or two questions as I recall.
25 Do not place any special emphasis on the questions or
the answers to questions that the Court asked. It had

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3 no special significance. I asked it only because at
4 the moment I was a little unclear on what a certain
5 situation was and I thought a question would clarify it
6 for me. The only reason I did that was because I felt
7 if it was unclear to me, it might be unclear to you.
8 That was the only reason.

9 Evidence stricken from the record, of course,
10 is not part of the record. As I physically directed
11 the reporter to strike it from his notes, so you
12 should strike it from your recollection. Do not
13 consider it. It is not in the record.

14 There were occasions where a lawyer asked a
15 question and I sustained an objection to the question.
16 You may not speculate what the answer may have been if
17 the witness were permitted to answer. The fact is that
18 I sustained an objection to it and I felt it was
19 improper as a matter of law. It may have been as to
20 substance or form. It does not matter. It is not in
21 the record and you should not consider it.

22 At times a lawyer may have incorporated a fact
23 into a question and the one that comes to mind -- it
24 isn't the only instance -- was Mr. Fisher's question
25 to Mr. Valenzuela on whether he knew that Peruvian
cocaine had a higher yield than Bolivian cocaine.

1 I instructed you at the time that if the witness
2 answered "no" that you should not assume that what
3 Mr. Fisher said was true. It is not in the record.
4 The witness said "no." There is nothing in the record
5 which indicates any basis for that conclusion or
6 opinion. There was nothing wrong with asking the
7 question. I just want you to understand that there is
8 no proof in the record that Peruvian cocaine gives a
9 higher yield than Colombian cocaine.
10

11 The defendant Baeza offered evidence to estab-
12 lish that on November 8, 1973 he was arrested by the
13 Chilean police and was held in their custody until
14 November 17, 1973. Further, that upon his release all
15 charges against Baeza were dismissed. I charge you
16 that the mere fact of an arrest is no proof whatever
17 of the commission of any crime and you may infer
18 nothing against the defendant Baeza merely from the
19 fact that he was arrested by Chilean authorities.

20 I used the term "inference" and I used the term
21 "presumption" and I think they should be defined,
22 because I will point out to you that certain inference
23 may be drawn. An inference is a discretionary matter,
24 based upon common sense and experience. An inference
25 is a conclusion which the jury may draw and an example

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2 of that is the method of determining a fact issue
3 through circumstantial evidence.

4 On the other hand a presumption is a conclusion
5 which the law requires the jury to make and prevails
6 unless overcome by proof to the contrary by proof
7 beyond a reasonable doubt. An example of that, of
8 course, is the presumption of innocence.

9 You the jurors are the sole judges of the
10 credibility of the witnesses, which means the believa-
11 bility of the testimony and the weight their testimony
12 deserves. Scrutinize the testimony given and the
13 circumstances under which each witness testified and
14 every matter in evidence which tends to show whether a
15 witness is worthy of belief. Take into consideration
16 the witness's intelligence, age, motive. Why is a
17 witness testifying, what is his state of mind as he
18 sits before you, the demeanor and manner of the witness
19 while on the witness stand. Does a witness impress you
20 as one that is telling the full truth? Is he answering
21 fully? Take into consideration a witness's own ability
22 to observe the matters to which he has testified,
23 whether or not he impressed you as having an accurate
24 recollection of those matters. Take into the consider-
25 ation the relation that each witness bears to the

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2 outcome of the case and the manner in which each
3 witness might be affected by the verdict. I think
4 Mr. Sachs pointed out that all the Government agents
5 are in a sense interested witnesses and I think that
6 is so. I think they are interested in making the case
7 since once they worked on it.

8 On the other hand it is obvious when Mr. Obando
9 takes the stand he is an interested witness. He is
10 interested in the outcome of the case. When Laura,
11 Mirta and Theresa testified -- who are the mother,
12 sister and wife of the defendant Baeza -- they are
13 interested in the outcome of the case. Mr. Osorio is
14 interested in the case. He is named here as a
15 co-conspirator. You can take all those matters into
16 consideration when you evaluate the credibility of the
17 witnesses. Take into consideration the extent to
18 which, if at all, each witness is supported or
19 contradicted by other evidence.

20 Regarding the witnesses whose depositions were
21 transmitted to you through videotape, you can take
22 into consideration -- to the extent that you can --
23 the manner in which they answered questions and their
24 reaction and their demeanor while they were being
25 examined practically in the same manner as if they

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2 were on the witness stand before you. Of course I
3 know there is a difference. Mr. Fisher conceded that
4 it wasn't a professional job, but it showed something
5 and you may take all that into consideration.

6 There was some proof that Mr. Munoz and
7 Mr. Valenzuela at a time prior to the time that they
8 took the stand said something inconsistent with the
9 testimony given before you. If you remember correctly
10 there was also some testimony that one of the witnesses
11 failed to disclose certain matter before the grand jury.
12 I think Mr. Sheinberg brought that out.

13 Now, do not rely on my recollection as to what
14 the testimony was. Rely on your own recollections. I
15 am just using it as an example for the principle that
16 I am charging you on. The purpose of offering that
17 testimony was to show that the failure to answer at a
18 time when the answer should have been given or making
19 a statement that was inconsistent with the testimony
20 given challenges the credibility of the witness -- his
21 believability. As well, a prior statement made by a
22 witness that is inconsistent with a present statement
23 may be considered for that purpose and his failure to
24 give information when it was reasonable to expect that
25 he would give such information may also be deemed

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2 as an inconsistent statement. You determine all the
3 circumstances under which the prior alleged inconsis-
4 tent statement was made. You determine whether it was
5 a normal variation, whether it was something that
6 normally would not have been said in answer to whatever
7 question was asked, or whether it is something that
8 should have been disclosed, and then determine the
9 materiality of the prior statement. Was it a minor
10 matter, was it something vital? Then determine the
11 strength it has on the witness's believability. There
12 are certain normal variations that we all understand
13 and you are to use your good common sense and experience
14 in determining whether the statement was an intentional
15 lie and how it affects the witness's credibility.

16 If three trustworthy, truthful individuals saw
17 a single event, you expect certain normal variations.
18 If you asked any one of those individuals to repeat
19 what happened, you would expect certain variations.
20 As a matter of fact, if each one told the same story
21 exactly the same way or if an individual repeated his
22 version pause for pause, gesture for gesture you might
23 suspect it was rehearsed. We understand that there are
24 normal variations. We understand that there are
25 inconsistent statements. You must use your good common

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2 sense in distinguishing one from the other and you
3 alone determine whether the prior statement or failure
4 to give information was inconsistent, whether it is
5 inconsistent as to a material matter and the effect
6 such inconsistency has on the credibility of the
7 witness.

8 In this case the defendant, Alfonso Melo Obando,
9 testified and you must judge his testimony the same as
10 any other witness in the case. Use the same tests,
11 the same guides.

12 The defendants, Carlos Baeza and Alfredo Vargas
13 Vega did not testify. The law does not compel a
14 defendant in a criminal case to take the witness stand
15 and testify. No presumption of guilt may be raised and
16 no unfavorable inference of any kind may be drawn from
17 the failure of a defendant to testify. The defendant,
18 as previously charged, may rely on the failure of the
19 Government to prove its case. It would be improper
20 for you to discuss the failure of the defendant to
21 testify during your deliberations.

22 Mr. Valenzuela testified that he was a manufac-
23 turer of cocaine and he said that he participated in
24 the alleged conspiracy or at the very least he said
25 that he is a cocaine manufacturer. Mr. Valenzuela as

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2 a participant is classified as an accomplice. As an
3 accomplice he does not become incompetent as a witness
4 because of his participation in the crime charged. On
5 the contrary the testimony of an accomplice alone, if
6 believed to be true beyond a reasonable doubt, may be
7 of sufficient weight to sustain a verdict of guilty
8 even though not corroborated or supported by other
9 evidence.

10 I am not instructing you as to whether or not
11 there is corroboration, I am just saying to you that
12 even if there is none, if you believe the testimony of
13 an accomplice to be true beyond a reasonable doubt,
14 that may be of sufficient weight to sustain a verdict
15 of guilty.

16 However, the jury should keep in mind that such
17 testimony is always to be received with caution and
18 weighed with great care. You should never convict a
19 defendant upon the unsupported testimony of an alleged
20 accomplice unless you believe that unsupported testi-
21 mony to be true beyond a reasonable doubt.

22
23 (Continued next page.)

Charge of the Court

HS:GA
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I am not sure whether Mr. Valenzuela conceded that he was convicted as a felon, but he at least concedes that he is going to plead Guilty to a charge involving narcotics, and that is part of his deal with the Government. Of course you must take into consideration any promise of any reward for testifying. You must decide whether that is a motive for lying, and of course give the testimony the weight that you feel it deserves in light of the entire background and motive of the witness for testifying.

Was there proof that Valenzuela was convicted of a felony?

MR. FISHER: No, your Honor.

THE COURT: (continuing) Now, Mr. Carlos Munoz is a paid Agent for the Government. The testimony of an Informer who provides evidence against a defendant for pay or for personal advantage must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the Informant's testimony was affected by his interest.

Special Agent Grimes, I think, testified that the defendant, Alfredo Vargas Vega, made certain statements to him concerning an individual, I believe, named "Ricardo."

Evidence such as an admission of that kind, claimed to have been made by the defendant Vargas Vega, should

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also be considered with caution, and weighed with great care. All such evidence should be disregarded unless the Government proves to you beyond a reasonable doubt that the statement was knowingly and voluntarily made.

In other words, that the defendant Vargas Vega was aware of what he was saying, and it just wasn't a slip of the tongue, an inadvertent statement, a statement made because he was not aware of what he was saying, and that he had a choice, and he knew what he was doing, that he made it intentionally. If the Government does not prove all that beyond a reasonable doubt, then just disregard the alleged admission made by Mr. Vargas Vega. In determining whether the statement was made by the defendant knowingly and intentionally, take into consideration his age, education, his mental condition at the time, his treatment while in custody as shown by the evidence in the case.

Take into consideration whether the defendant Vargas Vega was advised as to his Constitutional rights and warned as to the consequences of his making the statement. You recall the testimony that he had a Constitutional right to remain silent, that if he said anything it could be used against him, that he had the right to counsel, that if he could not afford counsel, that

Charge of the Court

counsel would be appointed for him at Government expense, that if he decided to answer questions, he could at any time suspend the questioning and require a lawyer. The Government must prove those warnings were given by proof beyond a reasonable doubt. If the evidence in the case does not convince you that those warnings were given, and that the statement was knowingly and intentionally made, disregard it.

Now we come to the charge in the Indictment. The Indictment charges as follows:

"On or about, and between the 1st day of July, 1972, and the 18th day of November, 1973, both dates being approximate and inclusive within the Eastern District of New York, and elsewhere, the defendants Carlos Baeza, Juan Orsorio, also known as "Coco," Gilberto Morales, Victor Contreras, Alfonso Melo Obando, Alfredo Vargas Vega, Enrique Munoz, John Doe, also known as 'Lucho,' John Doe, also known as 'Jose,' and John Doe, also known as 'Juan,' together with Luis Hernando Marino, named as a co-Conspirator, but not as a defendant, and others known and unknown to the Grand Jury, unlawfully, willfully and knowingly did combine, conspire, confederate and agree together, and with each other, to violate Sections 812, 841(a)(1), 841(b)(1)(A), 952(a), 960(a)(1), and 960

Charge of the Court

(b) (1) of Title 21 of the United States Code.

"1. It was a part of said Conspiracy that the defendants knowingly and intentionally would import large amounts of cocaine, a Schedule II Narcotic Drug, Controlled Substance, into the United States from places outside thereof.

"2. It was further a part of said Conspiracy that the defendants knowingly and intentionally would distribute, and possess with intent to distribute, large amounts of cocaine, a Schedule II Narcotic Drug, Controlled Substance.

"3. It was further a part of said Conspiracy that the defendants would conceal the existence of the Conspiracy, and would take steps designed to prevent disclosure of their activities.

"In furtherance of the Conspiracy, and to affect the objects thereof, the following overt acts, among others, were committed within the Eastern District of New York and elsewhere:

"Overt act one: In or about November, 1972, the defendant Munoz met with co-Conspirator Marino in Queens, New York."

At this time the Government will concede that there is no proof of that.

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MR. SCHLAM: Yes, your Honor.

THE COURT: Disregard that overt act.

"Overt act number two: On or about November 23,

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Does the Government concede there is no proof of overt act number two?

MR. SCHLAM: Yes, your Honor.

THE COURT: I won't read that. The mere fact that the Government does not prove overt acts one and two is of no consequence at all. It must prove at least one overt act.

"Overt act three: In or about June, 1973, defendants Baeza and Orsorio met with another in Santiago, Chile.

"Four: On or about August 7, 1973, defendant Contreras delivered a quantity of cocaine to another in Montreal, Canada.

"Five: On or about August 8, 1973, defendant Morales received approximately twenty-five and one-quarter pounds of cocaine from another in Montreal, Canada.

"Six: On or about November 16, 1973, defendants Obando and Vega met in New York, New York.

"Seven: On or about November 18, 1973, defendant John Doe, also known as 'Lucho,' received 13,000 United States dollars from another in Santiago, Chile."

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2 Now, the Drug Abuse and Control Act of 1970 was
3 enacted by the Congress, and it's expressed purpose was
4 to strictly control the manufacture, importation, posses-
5 sion and distribution of certain drugs. In doing that,
6 it established different Schedules.

7 Section 812(a) of Title 21 says -- Most of our
8 Federal Statutory Law is codified. This is under Title
9 21, which is captioned, "Food and Drugs."

10 "There are established five Schedules of Controlled
11 Substances, to be known as Schedules I, II, III, IV and V."

12 Under Schedule II, the definition -- and that is
13 under 812(b) (2) -- "The drug or other substance has a
14 high potential for abuse."

15 "(b) The drug or other substance has current ac-
16 cepted medical use, and treatment in the United States,
17 or currently accepted medical use, with severe restric-
18 tions.

19 "(c) Abuse of the drug or other substances may
20 lead to severe psychological or physical dependence."

21 Under Schedule II, I will read in parts:

22 "Any of the following substances, whether pro-
23 duced directly or indirectly, by extraction from sub-
24 stances of vegetable origin, or independently by means
25 of chemical synthesis, or by a combination of extraction

and chemical synthesis."

Under II is listed: "Coca leaves and any salt compound, derivative or preparation of coca leaves."

The Indictment refers to a number of Sections. 841(a)(1) makes it a crime for any person to knowingly or intentionally distribute or possess with intent to distribute a Controlled Substance.

Section 841(a)(1) makes it a crime to possess with intent to distribute cocaine.

Section 952 (a) makes it a crime to import cocaine. It says:

"It shall be unlawful to import into the Customs territory of the United States from any place outside thereof any Controlled Substance in Schedules I and II."

The defendants are not charged with either importing or possessing with intent to distribute, or distributing cocaine. They are charged under the Conspiracy Statute, which is Section 846, which in part says the following:

"Any person who Conspires to commit any offense defined in this sub-chapter"violates that Section."

It is important for you to remember that it is the Conspiracy that is charged.

Now, others unnamed in the Indictment, they are

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not before you. You are not to be concerned, because the others named are not here. You are to determine the guilt or innocence of these defendants.

What is a Conspiracy? What are these defendants charged with? Conspiracy is a combination of two or more persons, by concerted action organized to accomplish some unlawful purpose. A Conspiracy is sort of a partnership in criminal purposes, in which each member becomes the agent of all the other members of the Conspiracy. The gist of the offense is a combination or agreement to disregard the law. Mere similarity of conduct, mere presence, even knowledge by the accused that unlawful activity is going on, does not amount to a Conspiracy.

However, the evidence in the case need not show that the parties entered into any expressed or formal agreement, or that all the Conspirators spoke directly to each other, or that they even knew each other. What the proof must establish beyond a reasonable doubt in order to establish the existence of the Conspiracy, is that the members in some way or manner, or through some contrivance, positively or tacitly came to a mutual understanding to try to accomplish a common unlawful plan.

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Before the jury may find that an accused became a member of the conspiracy, it must first be established beyond a reasonable doubt that the conspiracy was knowingly and willfully formed. In other words, at least two or more persons got together and entered into the conspiracy, in this case for the purpose of importing cocaine and distributing cocaine or possessing with intent to distribute the cocaine and that the accused who has been claimed to be a member of the conspiracy willfully participated in the unlawful plan. The Government must prove that beyond a reasonable doubt through conversations of the accused, by what the accused said, by the actions of the accused, what the accused did, that he willfully entered into the conspiracy. In other words, that he knew that he was dealing in cocaine, that he was going into a business of cocaine, that he was participating to some extent in the cocaine business. When we talk about "willfulness" we mean the Government must prove beyond a reasonable doubt that the accused was aware of what he was doing, he knew he was dealing in cocaine and that he made a knowing choice, that he decided to go into the business.

There is no proof that either the defendant Obando or Vargas Vega participated before November 16,

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1973, the date of the arrest, but one who knowingly and willfully joins a conspiracy is charged with the same responsibility as if he had been a member of the conspiracy from the beginning.

The defendant Obando testified that he went to the Holiday Inn for the purpose of picking up a valise and that he picked up the valise as instructed for pay -- for \$50 -- and had no knowledge of what was in the valise. The Government must prove beyond a reasonable doubt that he knew that there were narcotics in the valise. Mr. Obando's perchance meeting -- if you credit that testimony -- with Mr. Vargas is not proof alone that he knew what was in the valise. You must look at all the circumstances surrounding his going to the Holiday Inn to determine whether he knew that there was cocaine in that valise.

The defendant Obando claimed he did not know that cocaine was concealed in the valise he was carrying to his car on November 16, 1973 at the time of his arrest. If the Government proves beyond a reasonable doubt that Obando had available to him sources of information that would have disclosed that cocaine was concealed in the valise and proved that the defendant Obando knowingly and consciously avoided finding out

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what was in the valise, the jury may infer that he knew that cocaine was in the valise.

When we speak about conspiracy, we analogize it to a partnership. We think of partners in a legitimate business as being equal. Actually even in civil law there are variations of that concept. We do have partnerships where there are different levels of participation. The Government's claim here is that this was what we call a chain conspiracy, a conspiracy in which the different participants had different functions and operated at different levels.

Mr. Valenzuela if he is part of the conspiracy may very well have been the manufacturer. The Government charges that the defendant Baeza and the defendant Osorio were the exporters, that Mr. Munoz acted as a courier, and that -- there are others that are not before you today -- Gilberto Morales was an importer and distributor, that Contreras was a courier and that Obando and Vargas Vega were either importers or that Obando was acting on instructions from Vargas Vega. Those are just the theories. You have to determine whether the Government has proved that beyond a reasonable doubt.

The point I am making it is not just an equal

Charge of the Court

partnership where you expect everyone to be sharing equally and doing substantially the same work. All have different functions, all are performing at different levels, but the Government must prove beyond a reasonable doubt that the participants were aware that the success of their efforts depended on others. It is not necessary for the Government to prove that each accused knew the identity of the others, just that there were others and that their successful effort was needed for the successful efforts of each one in the conspiracy.

It does not matter that one defendant or one accused has a minor role. If the Government proves beyond a reasonable doubt that he knowingly and willfully entered into the conspiracy, he is equally guilty with those that you may find had a major role.

During the course of the trial I asked you to pigeonhole certain testimony to determine whether it was chargeable against any of the accused. I again suggest to you that you think of a legitimate partnership where one partner combined the others for any transaction made in the business of that partnership and during the term of that partnership.

Now, Mr. Munoz was never a member of the

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conspiracy so you cannot consider anything he said or did binding on any of these defendants. But if you find that the Government proved the conspiracy by proof beyond a reasonable doubt, as alleged in the indictment, and that the conspiracy existed for the purposes and during the term of the indictment, and the purpose was to import cocaine and to distribute the cocaine, and you find an individual X -- we will call him -- was a member of that conspiracy and that what he said or did was during the term of the conspiracy and to advance the conspiracy, then what Mr. X said or did binds the accused that you find the Government proved knowingly and willfully entered into the conspiracy.

If you find of course that the Government failed to prove an accused or any accused entered into the conspiracy, then just disregard it completely. In that event you will come out with a defendants' verdict.

The Government must prove beyond a reasonable doubt the following:

(1) That the conspiracy described in the indictment was willfully formed and was existent at or about the time alleged.

(2) That the accused knowingly and willfully

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2 became a member of the conspiracy. The Government
3 must prove criminal intent -- a state of mind -- by
4 proof of what that particular accused said or did.
5 The Government must prove that the accused knew that
6 his participation was in the cocaine business, that he
7 knew he was advancing the purposes of the cocaine
8 business.

9 (3) That one of the conspirators thereafter
10 knowingly committed an overt act.

11 (4) That such overt act was knowingly done in
12 furtherance of some object or purpose of the conspiracy.

13 By overt act is anything that is done or said
14 knowingly by the person who is aware that he is doing
15 it for the purposes of advancing the purposes of the
16 conspiracy. It might be a telephone call, it might be
17 a meeting, it might be a delivery of cocaine. It
18 doesn't necessarily have to be illegal in and of itself.
19 The Government must prove that the act was done
20 knowingly for the purpose of advancing the objects of
21 the partnership.

22 The Government must prove those four essential
23 elements of the crime charged beyond a reasonable
24 doubt. If it fails in proving any one of them, you
25 must find the accused not guilty. If the Government
proves all the allegations, all the essential

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2 elements of the crime charged by proof beyond a
3 reasonable doubt, then you have a duty to find the
4 accused guilty.

5 Now, something was said by counsel that seemed
6 to refer to punishment. Do not concern yourselves
7 with punishment. Your obligation, your duty as jurors
8 is just to determine whether the Government has proved
9 the guilt of the defendants by proof beyond a reasonable
10 doubt. Punishment should be left solely to the Court.

11 During your deliberations you may have questions
12 to ask of the Court. You make them through your foreman.
13 If you want any testimony read, just say so and try to
14 identify the subject matter and or the witness if you
15 can. It will make it easier to find. Too often the
16 testimony is barely described. It is difficult enough
17 when it is specifically described, because you must go
18 through all the testimony, the direct, the cross, the
19 redirect, the recross and isolate what you want. It
20 takes a little time, but if that is what you want I
21 will try to give it to you. I will give you only what
22 you ask for.

23 The exhibits are in evidence -- I should say
24 some are just marked for identification, but of the
25 exhibits marked in evidence you may have them if you

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wish. You can ask for them all or ask for specific exhibits.

It is the duty of each juror to make his or her own determination as to each defendant. It is improper for a juror to go into the jury room and say:

"Well, you know, they call me Good Time Charlie or Get-Along Mabel and I never argue and I will go along with what the majority wants."

That's absolutely wrong. It is equally wrong for any juror to take an intransigent position and refuse to discuss the evidence with the other jurors.

If you have arrived at a tentative determination and after an exchange of views with your fellow jurors you realize that your first determination was wrong, you have a duty to change that based on the evidence. The jury process is a deliberative process, which means an exchange of ideas based on analysis of the evidence. That is what you should be discussing, the evidence. If you do that and you arrive at a verdict, you have given the parties all they are entitled to, fair consideration of the evidence free of all bias, prejudice or sympathy and no one can complain.

Now, when you shall have arrived at a verdict I expect a note from your foreman saying that you have

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2 arrived at a verdict. Do not tell me what the verdict
3 is and do not tell me how you stand at any time during
4 your deliberations before you arrive at a verdict. The
5 jury proceedings are secretive and it wouldn't be proper
6 for you to tell me what the verdict is or how you stand.
7 When you arrive at a verdict I will call you into the
8 courtroom and I will ask the foreman to stand. I will
9 say in effect:

10 "United States of America against Carlos Baeza,
11 Alfonso Melo Obando and Alfredo Vargas Vega, how do you
12 find the defendant Carlos Baeza, guilty or not guilty?"
13 And you will render your verdict as to him.

14 Then I will ask: "How do you find as to the
15 defendant Alfonso Melo Obando, guilty or not guilty?"
16 And you will render your verdict.

17 I will then ask: "How do you find as to Alfredo
18 Vargas Vega, guilty or not guilty?" And you will
19 render your verdict.

20 You will then sit down and I will ask Juror
21 No. 2 whether he heard the verdict as rendered by the
22 foreman and whether it is his verdict, and then I will
23 go on to 3, 4, until I get all twelve. If all twelve
24 answer unanimously in the courtroom, then it becomes
25 the verdict in the case.

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At this point I am going to ask you to leave the courtroom. Do not start your deliberations yet. I want to talk to the lawyers.

(Jury leaves courtroom.)

THE COURT: Mr. Schlam, do you have anything?

MR. SCHLAM: Nothing.

THE COURT: First, Mr. Sheinberg, do you have anything?

MR. SHEINBERG: Yes, your Honor.

THE COURT: Any exceptions?

MR. SHEINBERG: Yes, your Honor.

May it please the Court, I submitted a request to charge to the jury on the question of intent and the question of knowledge. I would request that that charge be read to the jury.

THE COURT: No, I won't charge it verbatim.

MR. SHEINBERG: May the record note my exception.

THE COURT: Yes. Mr. Sachs?

MR. SACHS: Nothing, your Honor.

THE COURT: Mr. Fisher?

MR. FISHER: In addition my recollection is that your Honor did not charge the jury with respect to separate verdicts.

THE COURT: Really?

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MR. SACHS: Not until this trial.

THE COURT: I will use what you want.

MR. SACHS: In this context, your Honor, then I will withdraw it.

THE COURT: All right, seat the jury.

(The jury thereupon returned to the courtroom at 11:47 o'clock a.m.)

THE COURT: I would like to make some corrections, explanations, or additions to what I have already said. I charged that Obando went to the Holiday Inn to pick up suitcases. Of course his testimony is that he went to the Holiday Inn to pick up Mr. Munoz and take him to an airport.

Now, whether or not Mr. Munoz was a member of the conspiracy charged in the indictment is a fact question for you. I think it was improper for me to characterize him as a Government agent. He certainly was paid by the Government but you decide whether he was also a member of the conspiracy.

I also want to charge you that a reasonable doubt may arise from the failure of the Government to produce evidence.

Now, you are to retire to the Courtroom and decide the case before you. The guilt or innocence of

Charge of the Court

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2 each defendant must be decided separately. You decide
3 whether the Government proved the guilt of each defen-
4 dant by proof beyond a reasonable doubt. It is as if
5 you have three trials, and you arrive at separate
6 verdicts. As I indicated, you are going to be asked
7 to render separate verdicts.

8 Will the Clerk please swear in the marshals?

9 (The marshals were thereupon sworn at 11:49
10 o'clock a.m.)

11 THE COURT: Your lunch will be arriving at
12 about noontime, between 12:00 and 12:30. At about that
13 time I will release the lawyers for lunch. So if you
14 send me a note during the lunch hour I won't be able
15 to answer it. When I receive a note I call the lawyers
16 in and discuss it with them and then I call you in. So
17 if you don't hear from me it is not because I am not
18 paying any attention to you or I am discourteous, but
19 rather because I can't do anything about it.

20 The jury is excused for deliberation on the
21 matter in the custody of the marshals. I just recall
22 your oath to you, and that is the oath to render a
23 true and just verdict, and that means a verdict as to
24 each defendant based on the record free of all bias,
25 prejudice or sympathy and in accordance with the charge

